UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

CHING-HUA HUANG, Complainant, v. UNITED STATES POSTAL SERVICE, Respondent.	)	8 U.S.C. §1324b Proceeding Case No. 91200022

DECISION AND ORDER
(April 4, 1991)

MARVIN H. MORSE, Administrative Law Judge

Appearances: Ching-hua Huang, Complainant, pro se.
Stephen E. Alpern, Esq. and
Suzanne H. Milton, Esq., for
Respondent.

This case arises under Section 102 of the Immigration Reform and Control Act of 1986 (IRCA), as amended, 8 U.S.C. §1324b. Ching-hua Huang is a permanent resident alien of Chinese national origin, authorized to be employed in the United States. Ms. Huang (Complainant or Huang) charges that the United States Postal Service (Respondent or Postal Service) unlawfully discriminated against her when it discharged her on April 25, 1990 from her position as Distribution Clerk, Machine at its Flushing, New York facility.

The Complaint and enclosures indicate, although with some suggestions of earlier employee-employer conflict, that Huang was fired in April 1990, presumptively rendering timely the filing of her charge with the Office of Special Counsel for Unfair Immigration Related Employment Practices (OSC), i.e., within 180 days of the alleged discrimination. 8 U.S.C. §1324b(d)(3). Documents accompanying the Complaint include, inter alia: (i) a copy of Respondent's April 25, 1990 "notice of removal" effective June 7, 1990; (ii) Huang's charge dated September 28, 1990; (iii) OSC's letter to her of October 9, 1990 advising that "[o]n October 1, 1990, this Office received your charge . . . (alleging) that U.S. Postal Service fired you because of your national origin"; and, (iv) OSC's determination letter of December 11, 1990.

Huang's filings in support of her Complaint include extensive correspondence with OSC prior to April 25, 1990, consistent with a hypothesis that the discrimination occurred as early as May 1989. Although they reflect an effort to obtain OSC intervention in difficulties she was experiencing with Postal Service management, these filings make clear that Complainant was not put on notice of

discharge prior to April 25, 1990. Accordingly, I am satisfied that the filing with OSC on October 1, 1990 was timely.

The OSC determination letter advised Huang that on the basis of its investigation, "we found no reason to believe that national origin discrimination occurred." OSC also informed her of the opportunity to file a complaint before an administrative law judge not later than April 29, 1991, i.e., 90 days after the end of OSC's 120-day determination period. 8 U.S.C.§1324b(d)(2).

The preconditions for maintaining a private action having been satisfied, on February 6, 1991, Complainant timely filed a Complaint in the Office of the Chief Administrative Hearing Officer (OCAHO) which alleges that the Postal Service "knowingly and intentionally fired (her) because of her Chinese national origin." On February 8, 1991 OCAHO issued its Notice of Hearing as in the usual course, transmitting the Complaint to Respondent. On March 29, 1991, the Postal Service filed an Answer dated March 22, 1991.[1]

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1 The Notice of Hearing was addressed by OCAHO to Respondent at the Flushing, New York address identified in the Complaint as the location at which Huang had been employed. The Postal Service certified mail receipt card was signed for at that facility on February 20, 1991. Upon transmitting the Answer under date of March 27, Respondent's lawyer noted that "[s]ervice of the complaint was not made upon the General Counsel, but the complaint was received in the Brooklyn Queens Division of the Postal Service on February 27, 1991." I accept the Answer as timely filed within thirty days of receipt by Respondent's "Brooklyn Queens Division," 28 C.F.R. §68.8(a), notwithstanding that the Answer was filed more than thirty days after it reached Respondent's Flushing facility.

Judicial concern with adequate notice of hearings and filings of complaints is well documented. See e.g., United States v. Koamerican Trading Corp., OCAHO Case No. 89100092 (May 19, 1989, Order . . . Denying Motion for Order of Default), vacated by CAHO (June 19, 1989), Decision and Order on Default. See also, United States v. DuBois Farms, Inc., OCAHO Case No. 90100179 (Aug. 29, 1989, Order Denying Default).

I do not consider service of the Notice of Hearing and Complaint upon an entity at an address provided by a party as always sufficient to start counting the time to answer at least where OCAHO is on notice, as in the case of governmental entities, that the address provided is not at the seat of government. Moreover, federal entities, no less than private sector employers, are entitled to service of process upon duly designated officials. Government and private employers alike ought to be able

(Continued)

Whatever obscurities there may be in Complainant's filings, it is manifest beyond question that her Complaint is premised on allegations of national origin, not citizenship, discrimination. Her OSC charge sheet, at paragraph 4, provides as follows:

> Injured Party Was Discriminated Against Because of (check one or both):
>
> X National Origin
> __ Citizenship

Only National Origin was marked.

The OCAHO complaint format at paragraph 6, filled in by Huang, reflects the same election of remedies. She deleted by placing a line through the reference to citizenship status, alleging solely that she was fired "because of her CHINESE national origin. . . ." OSC had not understood differently. Both its October 9 and December 11, 1990 letters to Huang recite unambiguously that "you alleged that U.S. Postal Service fired you because of your national origin." The December 11 letter stated that as the result of its investigation, OSC "found no reason to believe that national origin discrimination occurred." OSC added:

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1 to rely on regularity in receipt of such process. Indeed, the rules of practice and procedure for IRCA cases before administrative law judges provide for service of complaints, notices of hearing, etc., by delivery "to the individual party, partner of a party, officer of a corporate party, registered agent for service of process of a corporate party, or attorney of record of a party" (28 C.F.R. §68.3(a)) or by leaving copies at the "principal office, place of business, or residence of a party . . ." Id., at §68.3(b). Service alone on the employment location rather than on higher echelons is not only unwise, arguably it is in derogation of our rules.

Moreover, OCAHO is not unfamiliar with Respondent's "principal office." In Sosa v. United States Postal Service, OCAHO Case No. 89200001 (Dec. 15, 1989), the Postmaster General and Respondent's General Counsel were addressees on the notice of hearing. In Tovar v. United States Postal Service, OCAHO Case No. 90200006 (Nov. 19, 1990), the Postmaster General was the addressee on such notice. Uncertainty as to adequacy of service can be ameliorated by addressing process to the principal office of a governmental respondent.

> As a result, this Office will not file a complaint with an administrative law judge in this case. However, since the Equal Employment Opportunity Commission (EEOC) has primary jurisdiction over national origin discrimination charges against federal employers under Title VII (42 U.S.C. §2000e, et seq.), we are referring your charge to the EEOC for any additional action it deems appropriate.

Respondent's Answer, conceding jurisdiction by administrative law judges over claims of discrimination on the basis of citizenship status, argues as its First Affirmative Defense that allegations of national origin discrimination against it as an employer are covered by 42 U.S.C. §§2000e-2 et seq., and not by IRCA. For the reasons explained below, I agree.

As a permanent resident alien, Complainant is among the class of individuals protected against being discharged from employment because of national origin discrimination. Title 8 U.S.C. §1324b makes plain, however, at subsection (a)(2), that administrative law judges are not empowered to adjudicate national origin employment discrimination claims which are within the jurisdiction of the EEOC. IRCA excludes from the definition of an unfair immigration-related employment practice "discrimination because of an individual's national origin if the discrimination . . . is covered under section 703 of the Civil Rights Act of 1964," 8 U.S.C. §1324b(a)(2)(B). That Act, codified at 42 U.S.C. §§2000e et. seq., generally covers national origin discrimination by employers of fifteen or more employees, conferring enforcement jurisdiction on EEOC and the district courts.

The logic of the exception is plain. IRCA empowered administrative law judges to adjudicate claims arising out of the newly established citizenship venue, or the enlarged national origin jurisdiction, i.e., of employers with more than three employees and fewer than fifteen. Jurisdiction over national origin discrimination claims established before enactment of IRCA on November 6, 1986 was not to be disturbed. Case law under IRCA has clearly so understood. See e.g., Romo v. Todd Corp., OCAHO Case. No. 87200001 (Aug. 19, 1988), aff'd., United States v. Todd Corp., 900 F.2d 164 (9th Cir. 1990); Adatsi v. Citizens & Southern National Bank of Georgia, OCAHO Case No. 89200482 (July 23, 1990), appeal dismissed, Adatsi v. Dep't. of Justice, No. 90-8943, slip op. (11th Cir. February 25, 1991); Bethishou v. Ohmite Mfg., OCAHO Case No. 89200175 (Aug. 2, 1989), and Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990).

I find and conclude as a matter of common knowledge that the Postal Service is an entity employing more than fourteen employees. I find and conclude as a matter of official notice that the Flushing facility of the Postal Service, whatever its size

might be, is not an entity "which provides separately for the hiring . . . without reference to the practices of, and not under the control of or common control with, another subdivision . . ." of Respondent. 8 U.S.C. §1324b(g)(2)(D). It follows that the Flushing facility cannot be considered a separate entity for the purpose of establishing jurisdiction. Accordingly, this case is dismissed for lack of jurisdiction.

Having found that this forum lacks jurisdiction over the Complaint, it would be a futile act to retain it for an evidentiary hearing.

This Decision and Order is the final administrative order in this case pursuant to 8 U.S.C. §1324b(g)(i). Complainant may appeal this Decision and Order not later than 60 days after entry "in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business." 8 U.S.C. §1324b(i)(1).

SO ORDERED.

Dated this 4th day of April, 1991.

Marvin H. Morse
Administrative Law Judge

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